Associacion Hospital del Maestro, Inc. *and* **Jaime Soto Mercado.** Case 24-CA-4636

22 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS JENKINS AND HUNTER

On 20 January 1983 Administrative Law Judge Bruce C. Nasdor issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs[1] and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[1] In its answering brief, Respondent requests that it be reimbursed for the expenses incurred in defending itself. Under *Tiidee Products*, 194 NLRB 1234 (1972), the Board may order the payment of certain extraordinary remedies, such as attorneys' fees, if it determines that a party has engaged in frivolous litigation. We cannot conclude that the present case constitutes frivolous litigation and therefore deny Respondent's request.

DECISION

BRUCE C. NASDOR, Adminstrative Law Judge: This case[1] was tried at Hato Rey, Puerto Rico, on September 14, 1982. Two independent violations of Section 8(a)(1) of the National Labor Relations Act (herein called the Act) are alleged. Upon the entire record, including my observation of the demeanor of the witness, and after due consideration of the brief, I make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Respondent has maintained its principal office and place of business at Avenida Domenech Final, Hato Rey, in the city of San Juan and Commonwealth of Puerto Rico, where it is, and has been at all times material herein, engaged as a health care institution in the operation of the hospital providing hospital, medical, and related health services.

During the past year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its hospital operations, derived gross revenues therefrom in excess of $250,000, and, during the same period of time, purchased and caused to be shipped and delivered to its place of business directly to points and places located outside the Commonwealth of Puerto Rico materials and supplies valued in excess of $50,000. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

II. THE LABOR ORGANIZATION

Union de Tronquistas De Puerto Rico, Local 901, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union), is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Counsel for the General Counsel called as her only witness Osvaldo Torres, an admitted supervisor of the laundry department, to prove the two allegations of the complaint. He was examined pursuant to Rule 611(c) of the Federal Rules.

The first allegation of the complaint declares that on or about February 19, 1982,[2] Torres instructed an employee that said employee was prohibited from engaging in any activity in support of, or in behalf of, the Union during nonworking time on hospital premises, and further threatened this employee with unspecified reprisals if the prohibition was violated.

Torres testified that, in February, he called Jaime Soto Mercado to his office to inform him that two executives of the hospital had informed Torres that Soto was campaigning for the Union during working hours, and that Soto was disrupting the operations of the hospital. According to the testimony of Torres, he informed Soto that he should not be campaigning for the Union during working hours and that outside working hours he had the right to campaign as he wished. Torres instructed Soto that if he continued carrying out the campaign and interrupting his coworkers that some sort of discipline would be meted out. Torres further testified that the two executives of the hospital who he had mentioned were the assistant to the vice president of the board of directors and Industrial Relations Director Monserrate. Torres testified that when he used the term "working hours" to Soto he was referring to Soto's work schedule, excluding lunch and breaks. Torres testified further he related to Soto that when he, Soto, had specified duties to perform he could not campaign for the Union.

Paraphrasing Torres' additional testimony, he testified he was present between 10 and 11 a.m. on an occasion when Soto was warned by a supervisor, Lopez, not to

[1] The caption appears as amended, by reason of severance of cases.

[2] All dates are in 1982 unless otherwise specified.

engage in conversation with another employee, because they were working and the conversation was interfering with work in the laundry area.

Torres denied specifically that he told Soto he was prohibited from engaging in union activity during nonworking time.

Soto was not called as a witness to testify in this matter.

Torres also testified in support of the second allegation of the complaint. According to Torres, in January or February, he overheard Soto speaking in a loud voice during working hours to employee Martin Colon, who was a shop steward for the incumbent Union. Torres overheard Soto state "as the president of the Union which represented those unionized in the hospital was a thief, that he had stolen some money that had been earmarked for giving a party—if I remember correctly—a party or an assembly, and that he had taken the money, due to which he had to be taken out, defeated. And that the Teamsters had to be brought into the hospital. That is what they spoke about, more or less."

Either the next day, or a week later, Torres asked Colon whether Soto was the leader or the Teamsters representative from the hospital. Colon responded affirmatively.

This conversation took place in Torres' office.

Conclusions and Analysis

With reference to the first allegation, counsel for the General Counsel has adduced testimony that a supervisor was acting in Respondent's legitimate interest by instructing an employee not to utilize working time for matters unrelated to the job. Moreover, Respondent's motivation was to prevent said employee from interrupting the work of other employees. The testimony of Torres is unrefuted. No other witness testified. Torres specifically advised Soto that no constraints were placed on his right to engage in activities, including union activities, unrelated to his job, when on nonworking time. Indeed the Board recognizes the special circumstances of a hospital setting. It so stated in *St. John's Hospital*, 222 NLRB 1150 (1976), "We recognize that the primary function of a hospital is patient care and that a tranquil atmosphere is essential to the carrying out of that function. In order to provide that atmosphere, hospitals may be justified in imposing somewhat more stringent prohibitions on solicitation than are generally permitted." It is noted that Soto performed his duties in various departments throughout the hospital.

Accordingly I will recommend dismissal of this allegation.

Regarding the second allegation, the surrounding facts do not warrant a remedial order. Torres had already became privy to Soto's sentiments, so any interrogation was superfluous. Moreover, in context, there was no coercion, nor was any evidence adduced that Colon communicated the conversation to any of his coworkers. Colon did not testify. Furthermore, the conversation was so innocuous and isolated in nature I consider it *de minimis* and devoid of substance. See *Wagner Water Heater Co.*, 203 NLRB 518 (1973).

Accordingly, I will recommend dismissal of this allegation.

Conclusions of Law

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The allegations of the complaint that Respondent has engaged in conduct violative of Section 8(a)(1) of the Act have not been supported by substantial evidence.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER[3]

It is recommended that the complaint herein be, and it hereby is, dismissed in its entirety.

[3] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.